IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2562 OF 2005

Vijay Manik Dhaware ... Applicant

versus

State of Maharashtra ... Respondent

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Mr.P.R. Arjunwadkar, for the Applicant.

Mr.A.S. Gadkari, A.P.P., for the Respondent.

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CORAM : A.M.KHANWILKAR,J.

28th April 2005

P.C.:

. Circulation in this matter was obtained on 21st April 2005 for 25th April 2005. Intimation in that behalf was sent to the concerned officer from the office of the Public Prosecutor on 21st April 2005, which, in turn, was received by the investigating officer, as is accepted by him, on 23rd April 2005. Inspite of this, no attempt was made to send instructions to

the Public Prosecutor to resist this application, which was slated on 25th April 2005. On that count, matter was required to be adjourned to 27th April 2005. Even on 27th April 2005, no instructions were received by the Public Prosecutor, which necessitated adjournment of the case. The explanation offered by the investigating officer is that both on 25th April 2005 and 27th April 2005, he was busy on account of law and order problem. The explanation offered, to say the least, is casual one and clearly reflects about the non-serious attitude towards Court matters. Intimation was received by the Officer on 23rd April 2005. Assuming that the investigating officer was busy on account of some bandobast, there is nothing to show from the record as to what prevented the investigating officer to depute some responsible officer along with the relevant records and instructions to be given to the Public Prosecutor, so as to resist this application at the time of hearing fixed for 25th April 2005. In any case, he has not made any attempt to contact the Public Prosecutor to find out the next date of hearing which was fixed on account of adjournment caused for want of

instructions. That only reflects about the casual attitude towards the Court proceedings shown by the officer, that too when the matter is at the level of the High Court. This cannot be countenanced. The appropriate authority to take necessary action for the inaction of the investigating officer in ensuring that proper assistance is given to the Public Prosecutor on or before the date on which the matter was to be taken up for hearing in the first instance and fixed on the subsequent dates inspite of clear Circular issued by the Home Department of the State of Maharashtra. Compliance report be submitted to this Court within four weeks. That report will be considered on 14th June 2005.

. Matter is heard on merits. Heard Counsel for the parties. Perused the record. Indeed, the offence in question is a serious offence. However, the Applicant has been named in the commission of the offence solely on the basis of supplementary statement of prosecutrix dated 29th October 2004. The date of incident is stated to be in the night between 24th October 2004 and 25th October 2005. F.I.R. has been registered

on 25th October 2004 naming Babasaheb Dhaware and Shivaji Tuperi as the persons responsible for the incident. After lapse of 4 days, supplementary statement of the prosecutrix has been recorded. Indeed, explanation has been offered in the supplementary statement as to why she did not name the Applicant in the first statement. However, even after investigation is complete, there is no evidence to corroborate the explanation offered by the prosecutrix. No statement has been recorded of any other independent person, resident of that area, that the talk referred to in the supplementary statement was going on. Besides, there is no medical evidence so as to indicate complicity of the Applicant in the commission of the crime. In other words, the sole evidence is the supplementary statement of the prosecutrix. The statement of prosecutrix by itself is a strong circumstance, but, in the peculiar facts of the present case, as the theory has been changed by the prosecution, the veracity of the said statement becomes doubtful, as no supporting evidence has been collected. No antecedents are reported against the Applicant. Prima facie,

there is substance in the grievance made by the Applicant that the Applicant has been falsely implicated out of political rivalry. That may be one of the possibility. Be that as it may, this application is allowed on the following conditions.

(A) The Applicant is directed to be released on bail in connection with CR.No.I-93/2004 registered with Pangari Police Station on executing personal bond in the sum of Rs.15,000/- (Rupees Fifteen thousand only) with two local sureties in the like amount.

(B) The Applicant shall not influence the prosecution witnesses nor shall tamper with the prosecution evidence in any manner whatsoever.

(C) The Applicant shall not enter the jurisdiction of Barshi taluka during the pendency of the trial, except for attending Court case on the specified dates.

(D) The Applicant shall inform the place of his residence within one week from the date of release to the investigating officer as well as the trial Court.

(E) The Applicant shall report to the nearest police station once in a month on first Saturday of every English calendar month between 10 a.m. to 2 p.m.

(F) The Applicant shall co-operate for early disposal of the trial. If the trial Court is of the opinion that the Applicant is in any manner responsible for causing delay in disposal of the trial, that opinion be recorded in the roznama, which can be a ground for cancellation of bail.

(A.M.KHANWILKAR,J.)